



In The Matter of

NIAGARA ORCHARD, INC.

Case No. 82-TLC-1

DECISION AND ORDER

This is a proceeding under Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1101 et seq.

On July 14, 1981, the Employer filed an application for Temporary Labor Certification for forty-seven alien workers to fill the positions of temporary harvest workers in New York. The period of employment was listed as September 10, 1981 to November 15, 1981.

On August 21, 1981, the Regional Administrator (RA) granted certification for the forty-seven workers, advising that consistent with the Act and regulations, the Employer should consider for employment all U.S. workers who are referred and should not refuse to hire any available worker for other than job related reasons until 50% of the contract period is completed. On September 11, 1981, the Employer informed the Department of Labor that on the advice of his attorney, it declined to hire five Puerto Rican workers scheduled on its clearance due to "still-pending 1977 law suits."

On September 22, 1981, the RA informed the Employer that due to its refusal to accept the qualified U.S. workers, it would be found ineligible to apply for temporary labor certification during the 1982 harvest season.

The Employer requested a hearing on October 12, 1981, pursuant to 20 C.F.R. 658.421(h). An Order To Show Cause was issued on November 13, 1981, in which, pursuant to 20 C.F.R. 658.421(j), the parties were given 30 days to submit written evidence and/or legal arguments, and 14 days in which to show cause why a hearing in this matter was necessary. To date, neither party has responded to that Order.

Findings and Conclusions

Based on the entire record, I hereby make the following findings and conclusions.

The record in this case is sufficient for a finding that U.S. workers were referred to the Employer for the 1981 harvest, and that the Employer refused to hire them, in violation of 20 C.F.R. 655.203. To date, the Employer has offered no explanation for the violation. Therefore,

the decision of the RA, finding the Employer ineligible to apply for temporary labor certification during the 1982 harvest season is affirmed.

ORDER

It is hereby ORDERED that Niagara Orchards, Inc. is ineligible to apply for temporary labor certification during the 1982 harvest season.

ROY P. SMITH
Administrative Law Judge

Dated: JAN 2 1982
Washington, D.C.
RPS/JA/gaf